LAWRENCE T. ABRAHAM ET AL.

IBLA 83-289 Decided August 31, 1984

Appeal from decision of the Socorro District Office, Bureau of Land Management, rejecting color-of-title application NM 52193.

Affirmed.

1. Color or Claim of Title: Applications

An applicant under the Color of Title Act must establish that the statutory and regulatory conditions for purchase have been met. Failure to carry the burden of proof with respect to any one of the elements of the claim asserted is fatal to the application.

2. Color or Claim of Title: Applications -- Color or Claim of Title: Good Faith

Good faith as that term is used in the Color of Title Act, 43 U.S.C. § 1068 (1982), requires that a claimant and his predecessors in interest reasonably believe that no defect exists in the title to the land claimed. The Department may consider whether a claimant's belief was unreasonable in light of the facts actually known or available to the claimant or a predecessor.

APPEARANCES: Lawrence T. Abraham for appellants; John H. Harrington, Esq., Office of the Field Solicitor, Southwest Region, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Lawrence T. Abraham, Karen A. Abraham, Sandra K. Dhieux, and Larry P. Abraham have appealed from a decision dated December 21, 1982, by the Socorro, New Mexico, District Office, Bureau of Land Management (BLM), rejecting appellants' color-of-title application NM 52193, filed on April 20, 1982, pursuant to the Color of Title Act, 43 U.S.C. § 1068 (1982).

The Color of Title Act provides:

The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a

> claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, or (b) may, in his discretion, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units, issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than $1.25 per acre[.]

43 U.S.C. § 1068 (1982). Departmental regulation 43 CFR 2540.0-5(b) implements these statutory requirements and distinguishes two classes for applications made for land pursuant to the Act, as follows:

> The claims recognized by the act will be referred to in this part as claims of class 1, and claim [sic] of class 2. A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. A claim of class 2 is one which has been held in good faith and in peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

BLM rejected the Abraham application as a claim under class 1 for the reason that no valuable improvements had been placed upon the land nor had any part been reduced to cultivation as required by 43 CFR 2540.0-5(b). Appellants' claim was based upon asserted rights to the "approximate N 1/2 of lot 35, also referred to as Tr. 20, Map 158, MRGCD located in Sec. 30, R. 1 E., T. 2 S., New Mexico Principal Meridian" (Appellants' application dated as filed Apr. 20, 1982).

A grasp of the numerous differing land descriptions used in the various transfers in the chain of title is essential to an understanding of this appeal. Some descriptions refer to lot 20. Lot 20 was created in the original 1914 cadastral survey. The total acreage in lot 20, according to the survey returns, was 31.78 acres. Other descriptions are based on map 158 drawn by the Middle Rio Grande Conservancy District (MRGCD). On this map, lot 20 is shown as a combination of a tract 20 (containing approximately 21.07 acres) and the west part of a tract 18 (containing 15.32 acres),

with tract 20 to the west of tract 18. A dependent resurvey approved on February 3, 1981, re-lotted the Federal lands so that what was formerly lot 20 became lot 35, and created a new lot 34, apparently the results of accretions to old lot 20 on the west of lot 35.

Appellants' claim is based upon a quitclaim deed acquired from Sid M. Vinyard on December 1, 1980, which contains a metes and bounds description of 15.89 acres of land found in the N 1/2, lot 20. This description, which refers to "tract 5," conforms to a description contained in an earlier conveyance of the land to Vinyard by Roy Dale and Phyllis K. Gallaher in 1973. The prior deed in this chain of title from Holm O. Bursum to Roy Dale and Phyllis K. Gallaher similarly describes the land in "tract 5." However, prior to May 16, 1961, deeds in appellants' chain of title describe the claimed land as the N 1/2 of tract 20, map 158, MRGCD. Thus, a 1956 warranty deed of the N 1/2 of tract 20 from Jose P. and Rosela G. Gonzales to Jose and Gregorita Chavez conveyed 10.5 acres. Thereafter, on May 16, 1961, Jose and Gregorita Chavez conveyed to Gale W. and Lee Cleven and Holm Bursum, Jr., a parcel then described as the N 1/2 of lot 20, alternatively described as all of tract 20, map 158, MRGCD, containing 15.98 acres described by metes and bounds. Not only did the 1961 description include more land in tract 20 than the preceding 1956 conveyance, the alternative description of the N 1/2 lot 20 apparently included land to the east of tract 20 in what is tract 18, map 158, MRGCD. Therefore, claimants' chain of title to land located outside the N 1/2 tract 20, map 158, MRGCD, but within the N 1/2 lot 20, begins with the conveyance of May 16, 1961. The BLM case file establishes that Lawrence Abraham learned the United States claimed ownership of all the land in lot 20 on September 4, 1980, when he visited the Socorro BLM office.

On appeal to this Board, appellants assert their color-of-title claim to the N 1/2 lot 35 is based on a 40-year chain of ownership documented by deeds dating back to a 1942 tax deed and a list of annual tax payments dating back to 1950. They complain of BLM personnel changes, delays, and loss of an earlier application as matters affecting a correct disposition of their application. They state that, on the advice of BLM, they filed their application based solely on tax and title criteria. They also assert that although they did not assert a claim based upon the existence of improvements, improvements do exist on the tract claimed.

BLM asserts that appellants do not own and cannot claim any improvements on this land to support their application, and that they have not demonstrated exclusive possession of the land claimed. In addition, BLM asserts that appellants did not acquire the tract in good faith, because they knew their predecessor in interest did not have good title on September 4, 1980, prior to execution of the December 1, 1980, quitclaim by Vinyard to appellants.

[1] An applicant under the Color of Title Act must establish to the satisfaction of the Secretary of the Interior that the statutory conditions for purchase under the Act have been met. Pedro A. Suazo, 75 IBLA 212, 215 (1983); Jeanne Pierresteguy, 23 IBLA 358, 83 I.D. 23 (1976); Homer Wheeler Mannix, 63 I.D. 249, 251 (1956). Contrary to appellants' assertion, tax information alone is insufficient to establish a class 1 claim. A failure

to carry the burden of proof with respect to any of the statutory elements required to be proven to support their claims is fatal to the application. Hal H. Memmott, 77 IBLA 399 (1983); Corrine M. Vigil, 74 IBLA 111 (1983).

The record establishes that Abraham was aware of the Federal claim to ownership of all of lot 20 no later than September 4, 1980, when he visited the Socorro BLM office. It is also apparent that, except for lands claimed in the N 1/2 of tract 20, he has no documented claim prior to 1961, since none of the deeds in his chain of title describe more than the N 1/2 of tract 20 until that time. Thus, he cannot maintain a color-of-title claim to anything other than the N 1/2 of tract 20, since he cannot show that the other land claimed was held in good faith for 20 years.

On September 13, 1982, BLM conducted a field examination of tract 20 and found no improvements on the N 1/2 tract 20. BLM reports a neighbor's improvements were observed on tract 18, but appellants do not own these improvements nor are they within the area to which appellants can lay claim. Without valuable improvements owned by the Abrahams on the land claimed, or an allegation that the land was cultivated, they cannot maintain a class I claim. Lester & Betty Stephens, 58 IBLA 14 (1981).

[2] The Color of Title Act also requires a showing the land claimed is held in good faith, i.e., that the claimants and their predecessors reasonably believe they and their predecessors had title to the land. In its December 21, 1982, decision, BLM made no finding with respect to good faith. However, in order to determine whether the claimants reasonably believed they had a valid claim of title, the Department may consider whether such a belief was reasonable in light of the facts known when the application was filed. Lawrence E. Willmorth, 64 IBLA 159 (1982). Knowledge of federal ownership of the land in question negates the possibility of a good faith claim in this case. See 43 CFR 2540.0-5(b); United States v. Wharton, 514 F.2d 406 (9th Cir. 1975); Day v. Hickel, 481 F.2d 473 (9th Cir. 1973). The record shows that appellant Lawrence Abraham learned the United States claimed all of lot 20 on September 4, 1980. Thus, appellants should have known their grantor did not have good title when he conveyed part of lot 20 to them by quitclaim deed on December 1, 1980. Given this circumstance, their claim must be rejected. Lester & Betty Stephens, supra at 19.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Socorro District Office is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge.